

TENNESSEE BOARD OF OPTOMETRY MINUTES

Date: May 4, 2005

Time: 9:00 A.M., CST

Location: Tennessee Room
Ground Floor, Cordell Hull Building
425 Fifth Avenue North
Nashville, TN

Members Present: Scott Spivey, OD, Chair
Jeff Foster, OD, Vice Chair
Jerry Richt, OD, Secretary
Eddie Abernathy, OD
Pier Briley

Staff Present: Robbie Bell, Director
Nicole Armstrong, Advisory Attorney
Sherry Owens, Board Administrator
Rick Agee, Unit Director
Barbara Maxwell, Administrative Director
Stacy Lannan, Licensing Technician

Dr. Spivey, chair, called the meeting to order at 9:05 a.m. A sufficient number of board members were present to constitute a quorum.

Review Board Meeting Minutes

Upon review of the January 26, 2005 Board Meeting Minutes, Dr. Richt noted a change on page three of the minutes. Dr. Foster made a motion, seconded by Dr. Abernathy, to approve the minutes as corrected. The motion carried.

Legislative Report

Mr. John Williams, lobbyist for the Tennessee Optometric Association, stated legislation regarding the length of time a prescription is valid and cosmetic contact lens which pertain to optometry is waiting to be signed by the Governor. Mr. Williams said money is being funded to set up a data base of people who are buying drugs.

Report from Jerry Kosten, Rules Coordinator

Ms. Kosten stated a rulemaking hearing was held on May 3, 2005 regarding the amendments to Rule 1045-2-.02 requiring new applicants to obtain criminal background checks and submit the

results to the board as part of the licensure process. Dr. Spivey made a motion, seconded by Dr. Richt, to adopt the rules as amended. A roll call voted was conducted and all board members voted in the affirmative.

The board asked Ms. Owens to sunshine the discussion of a rule amendment regarding contact lens for the next meeting. Mr. Foster agreed to work with Mr. Williams on the rule amendment language for the next meeting.

Conflict of Interest

Ms. Armstrong reviewed the conflict of interest policy with the board. Ms. Armstrong informed the board members to disclose any conflict of interest they may have prior to contested cases or any other legal proceedings or matters.

Office of General Counsel Report

Ms. Armstrong stated Rules 1045-2-.01, .09, .11 and .14, regarding a fee increase, the release of contact lens prescriptions and patient records retention became effective January 1, 2005.

Ms. Armstrong stated there are four open cases pertaining to the Board of Optometry, none of which are scheduled for today's meeting.

Investigative Report

Ms. Phelps stated five new complaints have been received. Ms. Phelps said the complaints are alleged under other. Ms. Phelps said two complaints have been closed pending court action.

Disciplinary Report

Ms. Phelps said there is one practitioner being monitored who must appear before the board to reinstate his license.

Fiscal Report

Ms. Owens reviewed the fiscal report stating the board has a cumulative carryover of \$12,801.39. Ms. Owens said a new report will be available for the August board meeting.

Administrative Report

Ms. Owens stated there are 1083 licensed Optometrists. Ms. Owens said all files for Optometry have been imaged.

Ms. Owens said Jean Rogers, OD has resigned from the board.

Mr. Agee said the staff would have a booth at the Tennessee Optometry Association convention. Mr. Agee said they have a laptop with wireless internet to show licensees how to access the

internet to renew their license, change their address and obtain other pertinent information regarding their profession.

File Review

Upon review, Dr. Richt made a motion, seconded by Dr. Spivey, to waive Part 3 of the National Exams for **Lyndon Graves** and issue Dr. Graves a license. The motion carried.

Upon review, Dr. Richt made a motion, seconded by Dr. Spivey, to accept the application of **Ronald Stello** upon successful completion of the Treatment and Management of Occular Disease (TMOD) program and six (6) hour course in oral medications. The motion carried.

Upon review, Dr. Richt made a motion, seconded by Dr. Foster, to approve the office name of **Aspen Grove Eye Care** submitted by Dr. Bill Jones. The motion carried.

Upon review, Dr. Spivey made a motion, seconded by Dr. Richt, to approve the office name of **Vue Optique** submitted by Dr. David Shen. The motion carried.

Upon review, Dr. Spivey made a motion, seconded by Dr. Foster, to accept the application of **Richard Savoy** upon successful completion of the six (6) hour course in oral medications. The motion carried.

Upon review, Dr. Spivey made a motion, seconded by Dr. Foster, to deny the application of **Amy Henley** until successful completion of the Treatment and Management of Occular Disease (TMOD) program and the one-hundred (100) hours course in therapeutic and ocular disease. The motion carried.

Upon review, Dr. Richt made a motion, seconded by Dr. Spivey, to waive Part 3 of the National Exams and accept the application of **Kevin Fisher** upon successful completion of the six (6) hour course in oral medications. The motion carried.

Review/Approve Newly Licensed and Reinstated Optometrists

Dr. Richt made a motion, seconded by Dr. Foster, to ratify the licensure of the following optometrists:

Debra Bierly
Maurice A. Clark
Steven Haleo
Elise A. Millie
Nainesh Pithwa
Brandon Lee Sanders
Amy Thacker
Larry Womack

The motion carried.

Dr. Foster made a motion, seconded by Dr. Spivey, to ratify the reinstatement of the following optometrist:

David Marc Cohen

The motion carried.

Discuss Lenscrafters case

Ms. Armstrong discussed the Lenscrafters case which stemmed from the Board's 1997 discipline of an Optometrist who worked in a Lenscrafters. Ms. Armstrong said as a result of a lawsuit filed by Lenscrafters and other optical centers the District Court for Middle Tennessee granted summary judgment in favor of the Department of Health and the Board in January 2003, finding that the statute did not violate the U. S. Constitution.

Ms. Armstrong said on April 14, 2005, the 6th Circuit Court of Appeals in Cincinnati, consisting of three judges, upheld the order of summary judgment. Ms. Armstrong said one of the plaintiffs in the original lawsuit filed a motion to have the case re-heard by the entire 6th Circuit; however, it may be several years before a decision of whether or not to hear the case is made.

The board discussed a request for comment that it had received from a publication called Review of Optometry. Ms. Armstrong invited the board to send her the comments to forward to Andrea Turner, Department of Health Communications/Media Relations Officer. Ms. Armstrong said she contacted the Attorney General's Office to inquire if the Attorney General or the local law firm that handled the case would comment as well and is waiting on a response.

With no other business to conduct, Dr. Foster made a motion, seconded by Dr. Richt, to adjourn at 11:35 a.m. The motion carried.

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